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13 *Attorneys for Plaintiff*

14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF ARIZONA

17 United States of America,

18 Plaintiff,

19 No. CR-22-01661-PHX-SPL

20 v.
21 Joshua Wayne Russell,

22 Defendant.

**GOVERNMENT'S SENTENCING
MEMORANDUM**

UNITED STATES' SENTENCING MEMORANDUM

23 The State of Arizona held its primary elections on August 2, 2022. On that day,
24 Defendant Joshua Russell left a voicemail for the victim (hereinafter, "Public Official"),
25 an election official with the Arizona Secretary of State's Office, in which he accused Public
26 Official of committing election fraud and threatened her life. On September 9, 2022,
27 Defendant left a second threatening voicemail message for the Public Official. And, on
28

1 November 15, 2022, Defendant left a third voicemail death threat for the Public Official,
 2 this time from a different phone number.

3 On December 9, 2022, Defendant was charged by complaint in Phoenix, Arizona
 4 for sending interstate threatening messages, and Defendant was arrested and made his
 5 initial court appearance on December 12, 2022, in the Northern District of Ohio. On
 6 December 14, 2022, Defendant was charged by indictment with three counts of interstate
 7 threats, in violation of 18 U.S.C. § 875(c), and three counts of making a threatening
 8 interstate telephone call, in violation of 47 U.S.C. § 223(a)(1)(C). Defendant pled guilty
 9 to one count of transmitting an interstate threatening communication.

10 Threats such as those sent by Defendant represent a growing problem of national
 11 concern: As is true in this case, threats leave public officials who administer elections
 12 fearful for their lives and for the safety of their families. Such threats undermine the rule
 13 of law, and they create conditions of fear and intimidation for public officials and
 14 government workers that challenge core tenets of our democracy.

15 For the reasons discussed below, a sentence of 30 months of imprisonment is
 16 sufficient but not greater than necessary to comply with the purposes outlined in 18 U.S.C.
 17 § 3553.

18 **I. BACKGROUND**

19 The Draft Presentence Investigation Report (“PSR”), ECF No. 42, and the lodged
 20 plea agreement (“Plea Agreement”), ECF No. 35, provide detailed information regarding
 21 the facts underlying the charged conduct, so the government only briefly describes the facts
 22 here.

23 Arizona’s primary elections were held on August 2, 2022, and its general election
 24 was held on November 8, 2022.¹ The election was certified in Arizona on December 5,
 25 2022.²

26
 27 ¹ Arizona Sec’y of State, Elections: 2022 Election Information, *available at*
 https://azsos.gov/elections/results-data/election-information/2022-election-information
 28 (last visited Mar. 14, 2024).

29 ² Arizona Sec’y of State, Elections: 2022 General Election Canvass, *available at*

1 On August 2, 2022, Defendant left a voicemail for Public Official on her desk line,
 2 in which he stated the following:

3 This message is for traitor [full name of Public Official]. You've drug
 4 your feet, you've done nothing, to protect our election for 2020.
 5 You're committing election fraud, you're starting to do it again, from
 6 day one. You're the enemy of the United States, you're a traitor to this
 7 country, and you better put your sh[inaudible], your fucking affairs in
 order, 'cause your days [inaudible] are extremely numbered.
 America's coming for you, and you will pay with your life, you
 communist fucking traitor bitch.

8 (PSR ¶¶ 6, 11; Plea Agreement at 7.) Upon listening to the voicemail from Defendant,
 9 employees with the Arizona Secretary of State's Office expressed fear and immediately
 10 reported the message to law enforcement. (Plea Agreement at 7.) Federal and state law
 11 enforcement immediately began investigating the voicemail as potentially posing an
 12 imminent threat to the life of the Public Official. (*Id.* at 7-8.)

13 On September 9, 2022, Defendant left a second voicemail for the Public Official, in
 14 which he stated the following:

15 This message is for terrorist [last name of Public Official]. The only
 16 reason you're still walking around on this planet is because we're
 17 waiting for the midterms to see you prosecuted for the crimes you
 18 have done to our nation. You are a terrorist. You are a derelict
 19 criminal. And you have a few short months to see yourself behind
 bars, or we will see you to the grave. You are a traitor to this nation,
 and you will suffer the fucking consequences.

20 (PSR ¶¶ 7, 11; Plea Agreement at 8.) The Arizona Secretary of State's Office provided the
 21 September 9, 2022 voicemail message to federal law enforcement. (Plea Agreement at 8.)

22 On November 15, 2022, Defendant left a third voicemail message for Public
 23 Official, this time from a different phone number, in which he stated:

24 This message is for communist, criminal, [full name of Public
 25 Official]. We will not endure your crimes on America another day.
 26 You've been busted, over and over again. We will not wait for you to
 27 be drugged through court. A war is coming for you. The entire nation
 is coming for you. And we will stop, at no end, until you are in the

28 <https://azsos.gov/elections/results-data/election-information/2022-election-information/2022-general-election-canvass> (last visited Mar. 14, 2024).

1 ground. You're a traitor to this nation. You're a fucking piece of shit
 2 communist, and you just signed your own death warrant. Get your
 affairs in order, cause, your days are very short.

3 (PSR ¶¶ 8, 11; Plea Agreement at 8.) Upon listening to the November 15, 2022 voicemail
 4 message from Defendant, employees with the Arizona Secretary of State's Office
 5 expressed fear and reported the message to law enforcement. (Plea Agreement at 8.)
 6 Federal and state law enforcement began investigating the voicemail as potentially posing
 7 an imminent threat to the life of the Public Official. (*Id.*)

8 Defendant was located in Ohio when he left each of the three voicemail messages.
 9 (Plea Agreement at 7-8.) On December 9, 2022, Defendant was charged by complaint in
 10 the District of Arizona for sending interstate threatening messages. (Complaint, ECF
 11 No. 3.) Defendant was arrested and made his initial court appearance on December 12,
 12 2022, in the Northern District of Ohio. (ECF No. 7, at 6.) On December 14, 2022,
 13 Defendant was charged by indictment in the District of Arizona with three counts of
 14 making an interstate threatening communication, in violation of 18 U.S.C. § 875(c), and
 15 three counts of making a threatening interstate telephone call, in violation of 47 U.S.C.
 16 § 223(a)(1)(C). (Indictment, ECF No. 1.)

17 On December 8, 2022, investigators attempted to contact Defendant and serve a
 18 search warrant at Defendant's residence in Bucyrus, Ohio. (PSR ¶ 9; *see* ECF No. 3, at 9-
 19 10.) When law enforcement confronted Defendant at the door, Defendant opened it
 20 halfway, then closed the door. (*Id.*) Investigators subsequently formed a perimeter around
 21 his residence and announced they possessed a search warrant. (*Id.*) Defendant grew
 22 belligerent and barricaded himself in his residence for approximately 15 to 20 minutes,
 23 leading law enforcement to deploy a flash bang device. (*Id.*) Defendant eventually exited
 24 his residence. (*Id.*) Throughout the time Defendant spoke with investigators, he
 25 maintained a belligerent demeanor, shouting and calling them names. (*Id.*)

26 At this time, when he was questioned by law enforcement, Defendant denied that
 27 he had transmitted the three voicemail messages described above. (PSR ¶ 9; Plea
 28 Agreement at 8-9.) After Defendant was arrested, he admitted that he had transmitted the

1 three above-described voicemail messages. (PSR ¶¶ 10, 11; Plea Agreement at 9.)

2 On August 31, 2023, Defendant pled guilty to Count One, making an interstate
 3 threatening communication, in violation of 18 U.S.C. § 875(c). (PSR ¶ 2.) Defendant
 4 acknowledged that he transmitted each of the August 2, 2022, September 9, 2022, and
 5 November 15, 2022 voicemail messages for the purpose of issuing a true threat, and that
 6 he meant to communicate a serious expression of an intent to commit an act of unlawful
 7 violence to a particular individual or group of individuals. (Plea Agreement at 7 & n.1, 9.)
 8 Defendant further acknowledged that a reasonable recipient would have interpreted each
 9 of these voicemails as a true threat. (*Id.* at 9.)

10 **II. SENTENCING RECOMMENDATION**

11 A. The Court Should Sentence Defendant to 30 Months of Imprisonment

12 Defendant's conduct warrants a term of 30 months of imprisonment, which would
 13 be sufficient but not greater than necessary to comply with the purposes set forth in
 14 18 U.S.C. § 3553.

15 Defendant pled guilty to one count of violating 18 U.S.C. § 875(c), which
 16 criminalizes "transmit[ting] in interstate or foreign commerce any communication
 17 containing any threat to kidnap any person or any threat to injure the person of another."
 18 18 U.S.C. § 875(c); *see* Plea Agreement at 2. In the Plea Agreement, the parties made no
 19 agreements as to sentencing except that the government would recommend that Defendant
 20 be sentenced to a term of imprisonment within the Sentencing Guidelines range as
 21 determined by the Court. (Plea Agreement at 3.)³

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 25 ³ Based on the Guidelines calculations set forth in the Draft Presentence Investigation
 26 Report ("PSR"), ECF No. 42, to which neither party objected, the government understands
 27 Defendant's Guidelines range to be 24 to 30 months. The government recommends a term
 28 of imprisonment at the top of this range for the reasons described below. Should the Court
 determine that Defendant's Guidelines range is different than that set forth in the Draft
 PSR, the government respectfully submits that it intends to make a recommendation within
 the Guidelines.

1 B. The Nature and Circumstances of the Offense and the History and
2 Characteristics of the Defendant (18 U.S.C. § 3553(a)(1))

3 The nature and circumstances of Defendant's offense conduct justify the 30-month
4 term of imprisonment that the government seeks here. Defendant targeted the Public
5 Official with three death threats in an attempt to intimidate her for her role in the
6 administration of elections in Arizona. Defendant left his first message on August 2, 2022,
7 the day of Arizona's primary elections, accusing the Public Official of election fraud and
8 then threatening her with death: "You're committing election fraud, you're starting to do
9 it again, from day one. You're the enemy of the United States, you're a traitor to this
10 country, and you better put your sh[inaudible], your fucking affairs in order, 'cause your
11 days [inaudible] are extremely numbered. America's coming for you, and you will pay
12 with your life." Employees at the Arizona Secretary of State's Office and federal and state
13 law enforcement viewed Defendant's voicemail message as a potentially imminent threat
14 to the life of the Public Official. As described above, employees reported this voicemail
15 immediately, and federal and state law enforcement expeditiously and urgently expended
16 resources to identify the location of Defendant.

17 Defendant did not stop his campaign of intimidation there. He left a second
18 threatening voicemail in September 2022. And then, after Arizona's general elections but
19 prior to the Public Official's certification of the election, Defendant left a third death threat
20 voicemail for the Public Official on November 15, 2022, this time using a different phone
21 number. In this voicemail, Defendant said, in part: "We will not wait for you to be drugged
22 through court. A war is coming for you. The entire nation is coming for you. And we will
23 stop, at no end, until you are in the ground. You're a traitor to this nation. You're a fucking
24 piece of shit communist, and you just signed your own death warrant. Get your affairs in
25 order, cause, your days are very short." Subsequently, law enforcement determined that
26 Defendant was using the same device for all three calls. (PSR ¶ 9.) Again, employees at
27 the Arizona Secretary of State's Office and federal and state law enforcement viewed
28 Defendant's voicemail message as a potentially imminent threat to the life of the Public

1 Official. As described above, employees reported this voicemail immediately, and federal
2 and state law enforcement quickly expended resources to identify the location of
3 Defendant.

4 Defendant targeted the Public Official for her role in the state's administration of
5 elections. Defendant's voicemails caused deep fear and apprehension among the Public
6 Official and employees at the Arizona Secretary of State's Office. With each voicemail,
7 Defendant used exceptionally vituperative threatening language. The repeated calls, and
8 the targeting of the Public Official during the 2022 primary and general elections,
9 underscores the seriousness of the offense conduct here.

10 Criminally threatening public officials is never warranted, regardless of Defendant's
11 views on Arizona's election results or its election administration, or how politically
12 charged or heated Defendant believed the issues to be. The nature and circumstances of
13 Defendant's offense conduct warrant a term of imprisonment of 30 months, at the top of
14 the Guidelines range for Defendant.

15 C. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense,
16 to Promote Respect for the Law, and to Provide Just Punishment for the
Offense (18 U.S.C. § 3553(a)(2)(A))

17 The government's sentencing recommendation accounts for the seriousness of the
18 offense. Defendant left three voicemails containing extremely threatening statements,
19 targeting the Public Official for her role in the administration of elections in Arizona.
20 Defendant called the Public Official, referenced his anger surrounding his beliefs about
21 alleged election irregularities, and demonstrated his willingness to incite fear to intimidate
22 and coerce her into changing her behavior and performing her duties as Defendant wished.
23 A sentence here should account for the seriousness of the offense, which strikes at one of
24 our core democratic institutions: the administration of free and fair elections.

25 Further, Defendant's offense conduct—threatening a public official—undermines
26 the rule of law itself. As described below, public officials and workers who administer
27 elections have faced a growing number of threats to their lives and the safety of their
28 families, and such threats have often disrupted or made more difficult the functioning of

1 government and the administration of elections. Given Defendant's conduct, a meaningful
 2 sentence is necessary to promote respect for the law.

3 Finally, a 30-month term of imprisonment would provide just punishment
 4 commensurate with the harm that Defendant caused. Defendant caused the Public Official
 5 and employees at the Arizona Secretary of State's Office to fear for the Public Official's
 6 life and safety. Defendant also caused law enforcement to expend resources during an
 7 election period to identify a potentially imminent threat to the life of one of Arizona's top
 8 election officials at the time.

9 D. The Need for the Sentence Imposed to Afford Adequate Deterrence to
 10 Criminal Conduct (18 U.S.C. § 3553(a)(2)(B))

11 A term of 30 months of imprisonment would adequately serve the purpose of
 12 general deterrence. The government possesses no information that indicates that the
 13 Defendant will commit similar offenses in this district. However, election officials and
 14 workers report that they are targeted by threats across the nation, and this disturbing trend
 15 underscores the need for general deterrence.

16 According to one survey, for instance, nearly one in three local election officials
 17 report being threatened, abused, or harassed in recent years, and nearly half reported being
 18 concerned about the safety of their colleagues and/or staff.⁴ Further, 73 percent of local
 19 election officials feel that threats have increased in recent years.⁵ There are serious effects
 20 to threats such as the ones charged here. For instance, over 50 percent of local election
 21 workers are concerned that threats, harassment, and intimidation will harm the retention
 22 and recruitment of workers to administer elections.⁶

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 25 ⁴ See *Local Election Officials Survey*, Brennan Center for Justice at 3 (Apr. 2023),
 26 available at <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-april-2023>.

27 ⁵ *Id.* at 11.

28 ⁶ *Id.* at 3.

1 These challenges to the retention and recruitment of election officials and workers
 2 have very real consequences in Arizona. In this state, “80% of the state’s counties have at
 3 least one new chief local election official, and 98% of Arizonans will see the 2024 election
 4 administered by someone different than the officials who administered the 2020 election.”⁷
 5 Tellingly, “the officials who left these posts took with them a combined 176 years of
 6 experience.”⁸ And, “[i]n the counties with new chief local election officials, the median
 7 amount of experience these officials had dropped from about 10 years to about 1 year.”⁹
 8 High turnover among election officials and workers is expensive due to costs “to search
 9 for, hire, and train new staff” on election administration processes and equipment specific
 10 to each office.¹⁰ Further, the loss of institutional knowledge can present serious challenges
 11 to the administration and security of elections.¹¹

12 Election officials and workers need to be able to administer and run free and fair
 13 elections safely and securely. A sentence of 30 months of imprisonment could push those
 14 who would criminally threaten election officials and workers to reconsider their planned
 15 conduct, as the public becomes increasingly aware that such criminal conduct can have
 16 serious consequences.

17 Further, the victims—and all individuals who administer our elections—deserve to
 18 be able to do their jobs without fear and intimidation, and to know that those who choose
 19 to threaten them will face just punishment.

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⁷ See Michael Beckel, et al., Issue One, *The High Cost of High Turnover*, at 4 (Sept. 2023), <https://issueone.org/wp-content/uploads/2023/09/The-High-Cost-of-High-Turnover-Report.pdf>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 8.

¹¹ *Id.* at 9-10.

III. Conclusion

For the foregoing reasons, the United States respectfully requests that the Court sentence Defendant to a term of imprisonment of 30 months, to be followed by a period of supervised release.

Respectfully submitted this 14th day of March, 2024.

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/s/ Tanya Senanayake
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CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2024, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorney of record for the defendant.

/s/ Tanya Senanayake
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